UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, ADMINISTRATOR *et al.*,	:	
	:	
Plaintiffs	:	
	:	
VS.	:	C.A. NO.: 1:04-CV-312-L
	:	
JEFFREY DERDERIAN *et al.*,	:	
	:	
Defendants	:	

AFFIDAVIT OF MARGARET HEBNER
IN SUPPORT OF RULE 12(b)(6) MOTION TO DISMISS
OF FOAMEX L.P., FOAMEX INTERNATIONAL INC. AND FMXI, INC.

Margaret Hebner, being first duly sworn, states as follows:

1. I am the Vice President of Business Support in the Technical Products business unit of Foamex, L.P. With the exception of a period between 1974 and 1978, I have been employed by Foamex L.P. or its predecessors since 1971. Foamex International Inc. is a Delaware holding company that owns 100% of Foamex, L.P.

2. Foamex, L.P. ("Foamex") is in the business of developing, manufacturing and selling polyurethane products. Foamex's business records indicate that Foamex did not sell any foam to American Foam Corporation (AFC) in Johnston, Rhode Island prior to July, 2001.

3. Polyurethane foam is produced by an exothermic reaction of two liquid chemicals: a polyol and an isocyanate. Those two chemicals, along with water, catalysts and surfactants, are mixed and poured onto a moving conveyor where a chemical reaction similar in appearance to bread rising creates polyurethane foam. By varying the chemical formulation used in the production process, foams of varying physical characteristics, such as density, tensile strength, elongation and firmness, can be produced. When requested by the customer/distributor or required by an end use communicated by the customer/distributor, a flame retardant chemical can be added to the formulation.

4. Polyurethane foam is a remarkably versatile commodity due to its unique combination of form and function. In addition to its superior cushioning qualities, it is light in weight, resists mildew, is lint free, does not aggravate common allergies, and can be cut or molded into many shapes.

5. The versatility of polyurethane is reflected in its ubiquitous presence throughout our daily environment. Furniture cushions, bedding, carpet pads, car seats, dashboards, briefcase linings, sponges, air filters, helmet liners, cosmetic applicators, packaging material, blood filters

and decubitus ulcer pads are only a few of the vast number of practical and efficient uses of polyurethane foam.

6. Foamex produces flexible polyether and polyester polyurethane foams at its plants in Eddystone, PA, Fort Wayne, IN, East Rutherford, NJ, and San Leandro, CA. Foamex produces bulk polyurethane foam for sale in large buns or blocks. Foamex sells foam in bulk to various distributors and fabricators, who in turn cut and/or further process the foam for particular applications.

7. Beginning in July, 2001, AFC was one of Foamex's fabricator customers for a short period of time. It is my understanding that AFC ordered foam from various foam manufacturers. After July, 2001, AFC ordered bulk foam from Foamex expressly specifying the type of foam, usually P120-34 non-flame retardant polyether packing foam. AFC is a well-respected manufacturer and producer of packaging products for many uses including, specifically, the costume jewelry trade. All of the foam which Foamex sold to AFC was shipped in truckloads of large foam buns or blocks having dimensions of approximately 74" by 84" by 36" to 40".

8. As a packaging fabricator, AFC must remanufacture the bulk polyurethane foam it orders, buys and receives from Foamex. This requires AFC to produce convoluted packing foam, a foam sheet of varying thickness with dimples on one side, to cushion the packaged product within the box or container. A "convoluter" is a large, expensive machine that processes the large polyurethane foam buns, slicing and cutting them into appropriate size sheets of dimpled packing foam. These are often 1" – 4" thick packing sheets about 7'x 8' in size. The packing foam is then cut again to conform to the package, box or container for its end use application.

9. Foamex never sold polyurethane foam to AFC which had been cut into sheets or otherwise fabricated into any product, shape or dimension other than large bulk buns.

10. Foamex never sold polyurethane foam to AFC which was convoluted or "dimpled" in contour.

11. Foamex never sold polyurethane foam to AFC which contained any fire retardant additives.

12. Foamex had no knowledge of any use or application of polyurethane foam employed by AFC other than specialty packaging applications for items such as jewelry, medical equipment, china and other products for which the aesthetics and presentation of the packaged products were emphasized. Foamex had no communications with AFC regarding any intended use of polyurethane foam by AFC or its customers for sound reduction purposes.

13. Foamex provided AFC with a material safety data sheet for polyurethane foam which contained information about the flammability and combustion products of the foam. In pertinent part, Foamex's material safety data sheet stated:

IV. FIRE AND EXPLOSION HAZARD DATA

Unusual Fire & Explosion Hazards: If ignited, foam can produce rapid flame spread, intense heat, dense black smoke and toxic gases. Material can melt into a burning liquid that can drip and flow.

Accumulated polyurethane dust can be readily ignited and presents a fire risk. High concentrations of dust in the air can explode if exposed to a flame, spark or other ignition sources. ...

VII. PRECAUTIONS FOR SAFE HANDLING AND USE

Safe Handling and Storage: Warehousing of bun stock, sheets, rolls and fabricated items should be stored under a fusible sprinkler system with a minimum of six feet clearance between stacks of foam and the sprinkler heads.

Do not store foam near any ignition sources such as exposed electrical or gas heating elements, open flames and exposed lights. Do not smoke in foam storage areas.

Do not allow foam scrap and cuttings to accumulate and maintain clear aisles with adequate access to all storage areas and exits. ...

IX. SPECIAL INFORMATION

Flexible polyurethane foam, like all organic materials, will burn if exposed to a sufficient heat source. The ignition temperature of polyurethane foam will vary depending on the product chemical formulation, but all polyurethane foams are combustible and can create a fire risk. Flexible polyurethane foams, once ignited, may degrade and melt to a combustible liquid, which may add to the fire involvement. ...

14. **Foamex's** sales documentation (an example is attached as Exhibit 1), which accompanied its products when shipped to its customers, including AFC, contained a warning about the flammability of polyurethane foam, stating:

WARNING – IMPORTANT NOTICE

ALL POLYURETHANE FOAMS, INCLUDING COMBUSTION MODIFIED FOAMS, WILL BURN. DO NOT EXPOSE TO ANY FLAME SOURCE. ONCE IGNITED, THEY CAN PRODUCE RAPID FLAME SPREAD, INTENSE HEAT, DENSE SMOKE AND TOXIC GASES CAUSING DEATH. WARNINGS SHOULD BE GIVEN TO YOUR EMPLOYEES AND CUSTOMERS. TEST DATA DOES NOT NECESSARILY REFLECT A FOAM'S PERFORMANCE UNDER ACTUAL FIRE CONDITIONS.

15. Foamex did not participate in, or make recommendations concerning, AFC's applications and uses of foam or any end products produced or sold by AFC.

16. Although polyurethane foams can be produced with fire retardant ("FR") additives to inhibit the spread of flame applied to the foam, all polyurethane foams, including FR foams, will burn and generate smoke and gases. There are many methods and specifications for testing the flammability of foam, such as Underwriters Laboratories' horizontal burn test (UL 94) and smoke generation test (UL 900). Customers in various industries, or in need of special applications, will require polyurethane foams to meet certain flammability test criteria by requesting FR additives when they order the polyurethane foam.

17. Flexible polyurethane foam is not appropriate for use in permanent structural acoustical applications, e.g. on the walls and ceilings of buildings. While some polyurethane foams can be used appropriately in acoustical applications such as machinery and equipment where sound reduction is needed, it does not meet requisite building and fire codes for use in buildings. Sound reduction products which generally meet the necessary building code requirements include fiberglass and melamine foam, which is a non-polyurethane foam. BASF in Germany is the primary (and perhaps only) manufacturer of melamine foam. This melamine foam is more expensive than typical polyurethane packaging foam. Melamine foam is distributed in the United States by Illbruck, Soundcoat and Polymer Technologies (Delaware) and perhaps others.

18. Foamex is not the only manufacturer of bulk foam of the type purchased by AFC. Bulk foam producers other than Foamex sold the same type of bulk foam for packaging uses to AFC.

Margaret Hebner

MARGARET HEBNER

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF Delaware)

SUBSCRIBED AND SWORN to before me by Margaret Hebner on this 25 day of August, 2004.

Rosemarie Henderson

Notary Public
State of Pennsylvania

My Commission Expires: 11/9/04

Notarial Seal
Rosemarie Henderson, Notary Public
Eddystone Boro, Delaware County
My Commission Expires Nov. 9, 2006
Member, Pennsylvania Association of Notaries

Foamex

1000 Columbia Avenue
Linwood, PA 19061

TELEPHONE NO.: 800-355-3626
DUNS NO.: 61-997-1039

ORIGINAL INVOICE

INVOICE NO.
Z76070
Pg 1 Of 1
INVOICE DATE
12/11/03

CHARGE TO

JOHNSON CONTROLS-EDIASA 2
PO BOX 2638
ATTN: ACCOUNTS PAYABLE
HOLLAND MI 49422

SHIP TO

JOHNSON CONTROLS-EDIASA 2
PO BOX 2638
ATTN: ACCOUNTS PAYABLE
HOLLAND MI 49422

CUSTOMER ORDER NUMBER & DATE	CUSTOMER CODE	ORDER NUMBER	FOB	TERMS
3342147 12/11/03	102902 000	156458001	SP NFA	NET30PROX

SHIPPING POINT	SHIP VIA	BILL OF LADING	CARTONS	WEIGHT	SUPPLIER CODE
JUAREZ,MX	CT - 19138	56356	2	84	

LINE NO.	DESCRIPTION	UNITS SHIPPED	UNITS BILLED	U/M	PRICE	EXTENSION
001	LAMINACION 113 YDS 3342147	100	100	LY	2.9303	293.03
			TOTAL AMOUNT DUE			$293.03

QS9000/ISO9001 registered plants:Arcade, Auburn, Cornelius, Eddystone Fort Wayne, Milan, Morristown Molded, Santa Teresa, Toronto

All foam with the prefixes V, H, or F and all Reflex brand polymers covered by this invoice meet the requirements of the Bureau of Home Furnishings Bulletin Number 117 at the time of shipment.

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D30I

PAYABLE IN U.S. FUNDS

"Any tax or freight charge on this invoice is net and not subject to discount of any kind."

2-TK-COL

REMIT TO ADDRESS BELOW:

Foamex

PO BOX 840562
DALLAS , TX
75284-0562